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TEAMSTERS LOCAL 853, Petitioner, v. KEYSTONE AUTOMOTIVE OPERATIONS, INC., Respondent.	Case No. 32-RC-137319 **PETITIONER'S BRIEF IN SUPPORT OF EXCEPTIONS TO THE HEARING OFFICER'S REPORT AND RECOMMENDATIONS**

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I. INTRODUCTION

This case is before the Board pursuant to the Exceptions filed by Petitioner Teamsters Local 853 ("Petitioner" or "the Union") to the Hearing Officer's Report and Recommendations on Objections filed by Petitioner alleging that Keystone Automotive ("Respondent" or "the Employer") engaged in objectionable conduct. The Hearing Officer sustained several of Petitioner's objections and ultimately ruled that the election should be set aside and that a new election be conducted. Petitioner agrees with these conclusions and the ultimate recommendation. However, the Hearing Officer also overruled several of the Union's objections, and the Union excepts to the conclusions regarding one of these overruled exceptions. Specifically, the Union maintains that the Employer's forced ride-alongs were coercive and therefore the objection should have been sustained. Finally, Petitioner excepts to the Hearing Officer's failure to recommend a *Lufkin* notice.

II. PROCEDURAL FACTS

Teamsters Local 853 filed an RC-petition on September 2, 2014 to represent a group of Keystone Automotive employees working at its Stockton and Union City facilities.[1] (Bd. Exh. 1(b)) After a hearing to determine the appropriateness of the unit, the Regional Director ordered an election in a unit that included the LKQ Salvage Drivers, Route Sales Drivers, Delivery Drivers and Warehouse Workers.

An election was held on February 19, 2015. (Jt. Exh. 1) After the tally of vote, there were 21 votes for the Union and 29 votes against the Union. (Bd. Exh. 1(b))) On February 27, 2015, the Union timely filed nineteen (19) objections to the conduct of the election. (Bd. Exh.1 (a)) On May 5, 2015, the Regional Director issued its Supplemental Decision on Objections and Notice of Hearing, setting fourteen (14) objections for hearing in their entirety, setting portions of three (3) objections for hearing, and overruling two (2) objections in their entirety, specifically Objections No. 2 and No. 8. (Bd. Exh. 1(b))

On May 26, 2015, the Union filed an exception with the National Labor Relations Board ("the Board") contesting the Regional Director's decision to overrule Objection No. 8. (Bd. Exh. 2) On June 4, 2015, the Board held that the Union raised issues of material fact regarding Objection No. 8

[1] The exhibits and transcript citations are those utilized from the Objections hearing.

that could best be resolved at hearing, and therefore ordered that the Objection be remanded to the Regional Director for consideration along with the other objections that were already set for hearing. (Bd. Exh. 3)

A hearing on the objections was held at Region 32 in Oakland, before Hearing Officer Janay Parnell, commencing on June 4, 2015. The hearing was held for seven (7) days and concluded on June 12, 2015. The parties submitted simultaneous closing briefs on June 22, 2015. On or around September 3, 2015, Hearing Officer Parnell issued the Report and Recommendations on Objections ("HO Report"). She sustained Objections 4, 6, 9 and 11 and found that the Employer's conduct reasonably tended to interfere with employees' free choice. (HO Report at 41) She overruled the rest of the objections, including Objection 8 regarding ride-alongs. As a result of the recommendation to sustain Objections 4, 6, 9, and 11, the Hearing Officer recommended that the election be set aside and a new election be conducted. (HO Report at 41)

III. ARGUMENT

A. The Hearing Officer Erred in Overruling Objection 8 and the Objection Should Be Sustained Because the Employer's Forced Ride-Alongs Were Coercive.

There was substantial evidence at hearing about the Employer using high-level supervisors and managers from other locations to conduct ride-alongs with the drivers in the bargaining unit, during the critical period between the filing of the petition and the election. Importantly, the Employer only rarely utilized ride-alongs prior to the Union campaign. When they did, the individuals conducting the ride-alongs were local managers or supervisors with authority over the drivers, and they conduct the ride-alongs only for training purposes; for instance when there was a new driver. Without a doubt, the frequency of ride-alongs increased exponentially and the purpose of the ride-alongs changed after the Union filed its representation petition.

The Union objected to the Employer's ride-alongs, alleging that they were coercive. The Regional Director initially overruled the objection on the basis that the Board has previously held that ride-alongs are not inherently coercive in *Frito-Lay Inc.,* 341 NLRB 515 (2004). Petitioner excepted to this decision on the basis that even under *Frito-Lay*, ride-alongs may be coercive depending on

specific factors and that those factors should be considered at hearing. The Board agreed and ordered Objection 8 to be considered at hearing. (Bd. Exh. 3)

After hearing, in its brief, Petitioner argued that Objection 8 should be sustained because the ride-alongs were coercive and therefore interfered with employees' free choice. In its closing brief, Petitioner also asserted that the Board should make a bright-line rule prohibiting campaign-related ride-alongs. However, given that *Frito-Lay* is the current rule, Petitioner primarily argued that under the *Frito-Lay* factors the ride-alongs were coercive. This is because the Employer had other alternative means of communication, the employees were not allowed to effectively decline ride-alongs, the ride-along guests were high level managers with no operational purpose for the ride-along, the ride-alongs were scheduled in a discriminatory manner, and there was a great deal of other objectionable conduct during the critical period.

In the Hearing Officer's Report and Recommendation on Objections, the Hearing Officer cited *Noah's New York Bagels*, 324 NLRB 266 (1997) and *Frito Lay Inc.*, 341 NLRB 515 (2004) finding that absent coercion ride-alongs were not inherently objectionable. (HO Report at 26) The Hearing Officer found that the facts in the instant case are similar to the *Frito-Lay* case where the Board held that the ride-alongs were not coercive. (HO Report at 26-27) Therefore, the Hearing Officer concluded that there is insufficient evidence to establish that the Employer's enhanced use of the ride-alongs during the critical period was generally objectionable and recommended that the objection be overruled. (HO Report at 28)

Petitioner excepts to this recommended finding and asks the Board to reverse this recommendation and instead sustain the objection. Petitioner specifically requests that the Board overrule *Frito-Lay* and establish a bright-line rule that ride-alongs during the critical period are inherently coercive and objectionable. In the alternative, Petitioner requests that the Board find that the Employer's actions in the instant case are objectionable and coercive given the totality of the circumstances, based on the factor analysis set forth in *Frito-Lay*

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i. The Board Should Create a Bright-Line Rule Prohibiting Campaign Ride-Alongs.

Petitioner requests that the Board reconsider the current rule that ride-alongs during a Union organizing campaign are not inherently objectionable as set forth in *Frito-Lay.* The test in an objection setting is whether the employer's conduct interferes with the free choice of the employees. Ride-alongs during an election certainly interfere with an employees' choice because of the coercive effect it has on the employees. This is particularly true, in cases like the instant one, where the employer has not previously used ride-alongs to communicate with its employees and then the Employer implemented regular ride-alongs with high-level managers from other locations who have no other connection to the facility. Clearly the ride-alongs were a result of the representation petition as there was no business reason for the ride-alongs. Therefore, the Employer, in this situation, was simply trying to show its power and authority over the drivers and therefore coerce and intimidate the drivers from supporting the Union.

In *Frito-Lay,* Member Wilma Liebman, in a concurring opinion, argued that the Board should adopt a bright-line rule prohibiting campaign-related ride-alongs altogether. *See Frito-Lay*, 351 NLRB at 518. In her concurrence, Member Liebman highlighted the fact that ride-alongs averaged 10-12 hours and were certainly instituted for campaign-related purposes. Member Liebman stated that the words and conduct during the ride-alongs "are less important than the reasonable tendency of the arrangement itself to put inappropriate pressure on individual employees." *Id.* Member Liebman further asserted that "a ride-along demonstrates the employer's authority over drivers" by placing them in close confinement with a superior for an entire workday and that this inherently puts pressure on employees to engage in election related conversation with the supervisor. *See Id.* Such pressure, according to Member Liebman, will tend to inhibit drivers from supporting the Union or engaging in open activity on behalf of the Union for fear that it would become the topic of a ride-along conversation.

Member Liebman focused on the fact that the current Board approach to examining *Frito-Lay* is not in line with the workplace realities. She stated that it should not matter that a driver may opt-out because an employee is unlikely to object to a ride-along from their high-level managers, as it would reveal their Union sympathies. Member Liebman attacked the approach to analyze whether

there are other means of communicating with the drivers, by specifically noting that the employer controls the work place and controls the work schedules of their employees and therefore can compel employees to listen to their campaign message in less troubling ways without having to do so in the close confines of a truck cab. Finally, she argued that the current approach ignores the subtle ways that these forced ride-alongs improperly inhibit employees.

Indeed, ride-alongs are similar to home visits, which have long been deemed to be per se objectionable. *See F.N. Calderwood*, 124 NLRB 121 (1959). In *Calderwood,* the Board held that whether the content of the meeting was coercive or not is irrelevant because the mere fact of the Employer visiting the employees' home is coercive. *Id.* The Board has held that the home visitations by an employer are inherently coercive because "the position of control over tenure of employment and working conditions which imparts the coercive effect to systematic individual interviews" that it conducts. *See Plant City Welding & Tank Co.,* 119 NLRB 131, 133-134 (1957) The Board further opined that this tactic clearly establishes the company's disapproval of the petitioning Union. *See Peoria Plastic Co.*, 117 NLRB 545 (1957) Like home visits, campaign-related ride-alongs should similarly be considered objectionably regardless of their conduct. Like home visits, ride-alongs are an extreme measure to discuss Union matters with an employee individually in the tight confines of a truck cab for several hours. This action clearly is used to show the employer's position of control and authority and therefore, the action in and of itself, is coercive and inhibiting, particularly in situations where the employer has never previously done ride-alongs until the Union campaign.

The instant case highlights why ride-alongs are inherently coercive and should be deemed objectionable. Here, the Employer never consistently utilized ride-alongs until after the petition was filed. The Employer also brought in high-level managers from other locations to ride with the employees, and the ride-alongs stopped immediately after the election was over. There was no operational purpose for the ride-alongs. Instead, the Employer simply had high-level strangers ride with the employees for, typically, their entire shift. The employees testified that this made them uncomfortable and some were even compelled to disclose their Union position to avoid uncomfortable discussions. (Tr. 1149) Certainly, the Employer's conduct intimidated employees and

inhibited their Union activity because of questions about who was supporting the Union and a desire to not have any more uncomfortable ride-alongs.

For these reasons, and as was eloquently set forth by Member Liebman, Petitioner encourages the Board to reconsider its current approach to questions regarding ride-alongs and instead establish a bright-line rule prohibiting campaign-related ride-alongs during the critical period between the filing of the petition and the election. If it does, the Employer clearly engaged in objectionable conduct and given that more than half of the employees in the bargaining unit are drivers, such objectionable conduct certainly tended to interfere with employees' free choice and is thus additional grounds for setting aside the election.

ii. The Ride-Alongs Were Implemented in a Coercive Manner Under the Frito-Lay Factors.

Even if the Board chooses not to adopt the bright-line rule as requested above, the ride-alongs in this case were still inherently coercive under the *Frito-Lay* factor analysis. *Frito-Lay* did not hold that ride-alongs are never coercive and never objectionable, but instead that ride-alongs may be objectionable if they are coercive. In *Frito-Lay*, the Board enumerated the factors to be considered as:

> (1)Whether the use and conduct of ride-alongs is reasonably tailored to meet the employer's need to communicate with its employees in light of the availability and effectiveness of alternative means of communications; (2) the atmosphere prevalent during the ride-alongs and the tenor of conversation between the drivers and the employer's representatives; (3) whether the employer effectively permitted the employees to decline ride-alongs; (4) the frequency of the ride-alongs, both during and prior to the election campaign; (5) the positions held by the ride-along guests; (6) whether the ride-alongs were scheduled in a discriminatory manner; and (7) whether the ride-alongs took place in a context otherwise free of objectionable contact.

Frito-Lay, supra, at 516-517. In *Frito-Lay,* the Board analyzed the evidence presented at hearing and determined that the ride-alongs were not coercive because ride-alongs were common prior to the election campaign and drivers were not scheduled for excessive ride-alongs. *Id.*

In recommending to overrule the objection, the Hearing Officer did not analyze each of the factors, but instead simply made a determination that the facts in the instant

case were very similar to those at issue in *Frito-Lay.* (HO Report at 26-28) However, that is not the case. There are significant factual distinctions that clearly show that, in the instant case, the Employer's use of ride-alongs was coercive and therefore objectionable.

In fact, in *Frito-Lay*, the election was a decertification campaign, which differs from a representation election, when there has been a relationship between the Union, the employer and the employees. In addition, some of the employer's conduct in *Frito-Lay* was constrained by a Collective Bargaining Agreement ("CBA"), which is not true in the instant case. Furthermore, and more importantly, the facts related to the specific factors set forth by the Board can easily be distinguished and the totality of the circumstances supports a finding that, in this case, the Employer's ride-alongs were coercive.

a. *The Employer Had Alternative Means of Communication*

The Hearing Officer found that in both cases the Employer's ability to communicate with its drivers' upcoming voting decision and the Employer's ability to communicate with its drivers at the facility was constrained because the drivers spent most of their time on the road. Therefore, presumably, the Hearing Officer determined that the Employer did not have effective alternative means of communication.

However, factually, that is simply not the case. Importantly, in *Frito-Lay,* the employees were working under a collective bargaining agreement ("CBA"') and therefore the employer was restricted in the number of meetings that it can hold in the facility. *See Frito*-Lay, 341 NLRB at 515, fn3. In the instant case, there was not a current CBA and the Employer had no restrictions on the number of meetings it could hold at the facility. The Employer asserted that employees were complaining about meeting and that is why it instituted the ride-alongs. However, the Employer continued to have several meetings a week even after it instituted the ride-alongs, including at least eight (8) lengthy meetings regarding the Union campaign. (Tr. 1077-1078, 1109-1110) The Employer, in the instant case certainly was not constrained by a CBA as was the case in *Frito-Lay,* nor did it restrain itself in meeting frequently with the employees outside of ride-alongs.

Similarly, in *Frito-Lay* the drivers had much less time at the facility than is the case here. In *Frito-Lay*, the employees are only at the facility for thirty (30) minutes before and after their routes. *See Frito-Lay*, 341 NLRB at 515, fn3. In the instant case, the employees are at the facility for between one to two hours prior to their first run, are at the facility for another hour prior to their second run, and are at the facility for another thirty to forty-five minutes after their route. (Tr. 777-779) In *Frito-Lay* the drivers were at the facility for no more than an hour each day, while in the instant case the drivers are at the facility for close to four (4) hours per day.

The employees also testified that managers are present during these times when the drivers are at the facility and have many opportunities to talk to an employee and ask them if they have any questions about the postings, in part because there is often downtime in the mornings. (Tr. 777-779, 1531-1532, 1580-1582) Finally, given that the Employer's witnesses testified that they typically only asked or talked about the Union for a few minutes, if at all, generally asking if they had questions about the anti-Union postings, forcing a ride-along for an entire shift is certainly not tailored to meet the communication needs of the Employer; particularly given the significant amount of time that the Employer had in this case to speak to the drivers without ride-alongs that was not present in *Frito-Lay*.

Contrary to the Hearing Officer's conclusions, the facts are clearly distinguishable in regards to this factor from the facts in *Frito-Lay*.

b. *The Atmosphere During the Ride-Alongs Was Tense and Included Interrogations*

The Hearing Officer did not address this factor. However, the Hearing Officer did find that several of the ride-along guests improperly interrogated Tolopa-Joe Faumuina during the ride-along, asking about his Union support and about others that support the Union, finding that this conduct was objectionable. (HO Report at 27) The Hearing Officer also concluded that Faumuina disseminated this information to other employees. (HO Report at 27) Therefore, it is likely that other drivers knew that there were

interrogations during the ride-alongs and made other drivers nervous and concerned that they would similarly be interrogated. In fact, one driver was visibly so uncomfortable with a ride-along that the Employer itself decided not to require his last ride-along[2]. (Tr. 977) Finally, one employee, Gordon Quarry, testified that he immediately informed Chavin Prum, the manager, that he was supporting the Union and did not want to talk about the Union. (Tr. 1149) If it was not uncomfortable and tense given the nature of the ride-alongs and the environment, including all of the other objectionable conduct occurring, Quarry would not have been compelled to make such a statement. This factor also favors the Union's position that the ride-alongs were inherently coercive.

c. ***The Employees Were Not Allowed to Effectively Decline Ride-Alongs***

The Hearing Officer determined that the facts in these cases were similar to *Frito-Lay* in part by concluding that when drivers objected to having ride-alongs their requests were honored without being questioned. However, that is simply not supported by the facts, because there is no evidence that, here, the employees ever requested to decline ride-alongs or ever had that opportunity.

In *Frito-Lay,* according to the Board, when drivers objected to having ride-alongs their requests were honored without being questioned. *See Frito-Lay*, 341 NLRB at 515. Furthermore, the drivers could ask for specific ride-along guests and the scheduling was informal. However, in this case, the employees were never told that they could decline a ride-along and at least two drivers testified that they did not believe they could have refused or declined a ride-along. (Tr. 318, 413) In fact, Quarry and Faumuina had to endure four (4) or more ride-alongs each, and would have declined later ride-alongs if they believed that was an option, but it simply was not.

The Hearing Officer is likely relying on the testimony of Prum and Elwood regarding Norman Panado not being required to take his final ride-along. However,

[2] The employee did not attempt to decline the ride-along because that was not an option (see discussion below), but the Employer simply decided not to ride with him that day.

Panado did not decline the ride-along but the Employer made the determination on its own based on his attitude and body language when told about his ride-along. (Tr. 977, 1028-1029) Again, Panado did not make such a request likely because none of the employees believed it was an option to decline ride-alongs.

The facts do not show that employees were able to effectively decline ride-alongs, but instead show the opposite, that employees did not believe there was any option to decline ride-alongs and therefore never requested to do so.

d. *The Frequency of Ride-Alongs Substantially Increased During the Campaign*

The Hearing Officer appears to agree with the Union that the Employer's use of ride along was greatly enhanced during the critical period. (HO Report at 28) This is certainly true, given that all witnesses testified that ride-alongs were very infrequent in both Stockton and Union City prior to the election, and only on rare occasions relating to training. Certainly, there were never ride-alongs with managers from other location prior to the election. Indeed, this is another distinguishing factor from *Frito-Lay*, where the Board found that ride-alongs were not uncommon prior to the election campaign. *See Frito-Lay*, 341 NLRB at 517. Here, there is no question that ride-alongs were uncommon and virtually unheard of prior to the election campaign, and once the campaign began drivers were subject to three or more ride-alongs in the four (4) months of the campaign. This exponential increase in the frequency of ride-alongs is strong evidence that the ride-alongs were coercive because it showed that the Employer was clearly trying to assert authority over the employees and was reacting negatively to the petition by forcing such ride-alongs.

e. *The Ride-Along Guests Were High Level Managers and Supervisors*

The Hearing Officer indicated a similarity in the positions held by the ride-along guests by stating "the Employer sent supervisory and non-supervisory "guests" along on their runs to provide information and answer any questions the drivers might have." (HO Report at 26-27) However, again this is not consistent with the facts.

In *Frito-Lay,* ride-alongs were administered by nonunion truck drivers from other facilities and company managers and supervisors. *See Frito-Lay*, 341 NLRB at 515, fn4. In fact, the Board found that "many of the ride-along guests were fellow drivers from other facilities." *Id.* at 517. That was simply not the case here. There is no evidence that fellow rank-and-file drivers conducted any of the ride-alongs. Indeed, the Employer provided the names of all of the Employer representatives that conducted ride-alongs and they were all either supervisors or managers, and many were high-level managers including the Vice-President of the Western Region. (Tr. 972-9973, 1019-1023, 1516-1517, 1569-1571)

The fact that management employees, including unknown management employees, were forced to ride with the drivers is inherently coercive in itself because of the control and power management has over employees. This is particularly true in this case where the Employer had never previously conducted ride-alongs at this systemic level, and when the vast majority of the ride-alongs were conducted by high-level managers from other facilities with no familiarity or responsibility over the Stockton or Union City operations.

The level of ride-along guests can easily be distinguished in this case from *Frito-Lay*, and the use of only managers and supervisors, and not rank-and-file drivers, further shows the coercive nature of the ride-alongs.

f. ***The Ride-Alongs Were Scheduled in a Discriminatory Manner***

The Hearing Officer also did not directly address the facts regarding whether the ride-alongs were scheduled in a discriminatory manner. The evidence at hearing, however, proves that Union supporters were subjected to a greater number of ride-alongs than other drivers. Faumuina, a known Union supporter, testified that he had nine (9) ride-alongs and he knew that Norman Panado, another Union supporter, had several ride-alongs. (Tr. 320-327) Faumuina also testified that he noticed that other drivers who were not for the Union received far fewer ride-alongs. (Tr. 320-321) Quarry, another known Union supporter, testified that he had four (4) ride-alongs. (Tr. 410-421) However, Antonio Jaime, who did not support the Union, and was favorably moved to office duties during the critical period,

testified on behalf of the Company that he only received one (1) ride-along at the very beginning of the Union campaign. (Tr. 1303-1304) There is substantial evidence that pro-Union drivers were subjected to a greater number of ride-alongs and thus the ride-alongs were scheduled in a discriminatory manner, furthering the argument that the ride-alongs were coercive and objectionable.

g. ***The Ride-Alongs Did Not Take Place in a Context Otherwise Free of Objectionable Conduct.***

The final, and an important factor, that the Hearing Officer simply did not mention is whether the ride-alongs took place in a context otherwise free of objectionable conduct. In *Frito-Lay*, the Board referred to the fact that the ride-alongs took pace in the context of a campaign free from coercive or objectionable conduct. *See Frito-Lay* at 341 NLRB at 517. However, that is not true in this case. The Hearing Officer recommended to sustain four (4) other charges of objectionable conduct. (HO Report at 41) Among the objections that the Hearing Officer recommended be sustained were interrogations of employees, including interrogations during ride-alongs. So, not only was there objectionable conduct during the campaign, but the ride-alongs themselves were not free of objectionable conduct. In this case, the ride-alongs were occurring while the Employer was improperly promising wage increases, unlawfully interrogating employees about their and other employees' Union sympathies, and making unlawful threats regarding terms and conditions of employment. The employees knew about this other conduct, and therefore, the forced ride-alongs were simply another tactic to interfere with employees' free choice in the election.

For all of the foregoing reasons, Petitioner requests that the Hearing Officer's recommendation to sustain Objection 8 be reversed and that the Board instead sustain the objection. There is clear evidence that the ride-alongs were coercive and tended to interfere with employees' free choice given the large number of drivers within the bargaining unit.

B. The Hearing Officer Erred By Failing to Require a *Lufkin* Notice in the Notice Regarding a New Election.

In *Lufkin Rule Co.*, 147 NLRB 341 (1964) the Board directed the Regional Director to include in the notice of a repeat election the fact that the new election is being ordered because the company's pre-election conduct interfered with the employees' freedom of choice in the initial election. The Board held that the primary reason for the notice was to inform all employees of the reasons, without getting into specifics, as to why the original elections were set aside and a new elections ordered. *Id.* Since the original rule, in cases where the Union excepts to the Hearing Officer's failure to order that the notice of a new election include a statement of the reasons that the election was set aside, the Board has regularly ordered such language be in the new notice of election. *See Fieldcrest Cannon, Inc.*, 327 NLRB 109 (1998); *Snap-on Tools Inc.*, 342 NLRB No. 2 (2004). Furthermore, the NLRB'S Casehandling Manual, Part 2, Representation Proceedings (2014), 11452.3 provides that, generally, the notice shall be ordered if requested and that the Board looks favorably on granting such requests when an election has been set aside and a new election ordered due to objectionable conduct.

Here, the Hearing Officer has found that the Employer committed objectionable conduct and recommends that the election be set aside and a new election be conducted. (HO Report at 41) Furthermore, Petitioner requested a *Lufkin* notice in its closing brief, after the Objections hearing and is hereby requesting such an order again in these exceptions. Given that the election is being set aside due to the Employer's objectionable conduct, the Board should order that the notice of a new election include the standard *Lufkin* notice, a statement of the reasons for why the election was set aside, and a new election ordered.

IV. CONCLUSION

For the foregoing reasons, Petitioner requests that the Board accept Petitioner's Exceptions by sustaining Objection 8 and ordering a *Lufkin* notice. Petitioner further requests that the Board adopt the Hearing Officer's recommended findings and conclusions sustaining Objections 4, 9, and 11 and recommending that the election be set aside and ordering a new election.

Dated: September 24, 2015

BEESON, TAYER & BODINE, APC

By: 

PETER M. MCENTEE

Attorneys for Teamsters Local 853

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SACRAMENTO

I declare that I am employed in the County of Sacramento, State of California. I am over the age of eighteen (18) years and not a party to this action. My business address is 520 Capitol Mall, Suite 300, California, 95814. On September 24, 2015, I served the following document(s):

PETITIONER'S BRIEF IN SUPPORT OF EXCEPTIONS TO THE HEARING OFFICER'S REPORT AND RECOMMENDATIONS

☐ **By Mail** to the parties in this action, as addressed below, in accordance with Code of Civil Procedure §1013(a), by placing a true and correct copy thereof enclosed in a sealed envelope in a designated area for outgoing mail. At Beeson, Tayer & Bodine, mail placed in that designated area is given the correct amount of postage and is deposited that same day, in the ordinary course of business in a United States mailbox in the City of Sacramento, California.

☐ **By Personal Delivery** to the parties in this action, as addressed below, of a true and correct copy thereof in accordance with Code of Civil Procedure §1011.

☐ **By Messenger Service** to the parties in this action, as addressed below, by placing a true and correct copy thereof in an envelope or package addressed to the persons at the addresses listed below and providing them to a professional messenger service in accordance with Code of Civil Procedure § 1011.

☐ **By Overnight Delivery** to the parties in this action, as addressed below, in accordance with Code of Civil Procedure §1013(c), by placing a true and correct copy thereof enclosed in a sealed envelope, with delivery fees prepaid or provided for, in an area designated for outgoing overnight mail. Mail placed in that designated area is picked up that same day, in the ordinary course of business, for delivery the following day via United Parcel Service Overnight Delivery.

☐ **By Facsimile Transmission** to the parties in this action, as addressed below, a true and correct copy thereof in accordance with Code of Civil Procedure §1013(e).

☒ **By Electronic Service** to the parties in this action, at the electronic notification address(es) below. Based on a court order or an agreement, the parties have agreed to accept service by electronic transmission in accordance with Code of Civil Procedure § 1010.6. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

Reyburn Lominack III, Esq.
Email: rlominack@laborlawyers.com

George Velastegui
Regional Director
NLRB, Region 32
george.velastegui@nlrb.gov

I declare under penalty of perjury that the foregoing is true and correct. Executed in Sacramento, California, on September 24, 2015.

Nona Danyeur-Mounir